

THE PROVINCE OF AGUSAN DEL NORTE, HERETO REPRESENTED BY GOVERNOR ERLPE JOHN M. AMANTE, PETITIONER, VS. THE COMMISSION ON ELECTIONS (COMELEC), PROBATIONAL BOARD OF CANVASSERS FOR...

G.R. NO. 165080. April 24, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Via this verified petition for certiorari under Rule 65 of the Rules of Court with prayer for injunctive relief, the province of Agusan del Norte, herein represented by its Governor, urges the Court to nullify and set aside the 3 August 2004 Resolution No. 04-0856[1] of respondent Commission on Elections (COMELEC or Commission) which, among other things, directed the proclamation of the 8[th] and 9[th] placed winning Sangguniang Panlalawigan (SP) candidates for the Second District of Agusan del Norte during the May 2004 national and local elections.

From the petition and its annexes, the separate comments thereon of public and private respondents and other pleadings, the Court gathers the following facts:

Months before the May 2004 national and local elections, Agusan del Norte was reclassified from third to second class province. Consequent to this upgrading, the COMELEC issued, on 8 March 2004, Resolution (Res.) No. 6662[2] which, in connection with the 2004 elections, allocated two additional SP seats for the 2[nd] District of Agusan del Norte. The same resolution also allocated the same number of additional SP slots for Misamis Occidental and for Lanao del Sur.

On 19 March 2004, the SP of Agusan del Norte passed Res. No. 074-04[3] expressing gratitude over and concurring with the aforementioned COMELEC resolution and informing the Commission that it shall implement the same starting in the May 10, 2004 national and local elections, and proposing April 12, 2004 as the deadline for the filing of certificates of candidacy for the additional seats. In turn, Director Pio Joson of the COMELEC's Office of the Deputy Executive Director for Operations (ODEDO), in a 22 March 2004 Very Urgent Memorandum,[4] apprised the COMELEC en banc of the aforesaid provincial resolution and recommended that a directive be issued to the Committee on Printing and other COMELEC working committees to effect the necessary changes in the allocation of election forms and in the printing of official ballots by allowing two more spaces for the positions of the additional members of the Agusan del Norte Provincial Board.

Obviously unbeknownst to the SP of Agusan del Norte at the time it enacted its resolution adverted to was the issuance of COMELEC Res. No. 04-0291[5] bearing the date 16 March 2004, which came out in the 18 April 2004 issue of the Daily Inquirer. Res. No. 04-0291 deferred the implementation of Res. No. 6662 in certain provinces, including Agusan del Norte, for perceived failure of their respective SPs to file with the COMELEC their petition for additional SP seats as required by Republic Act (R.A.) No. 7160, as amended, otherwise known as the Local Government Code of 1991. Insofar as relevant, COMELEC Res. 04-0291 states:

This pertains to the Memorandum dated 12 March 2004 of Atty. Pio Jose S. Joson ... inviting the attention of the [Comelec] relative to the allocated seat for members of the [SP] for ... Misamis Occidental, Agusan del Norte and Lanao del Sur pursuant to ... Resolution No. 6662.

The Memorandum of Atty. Joson reads:

"This refers to Resolution No. 6662 entitled

In this connection, this office would like to invite attention of the Commission relative to the allocated seats for members of [the SP for the [three] Provinces ... because Annex "B" of said Resolution increase the allocation number of [SP] membership from eight (8) to ten (10) pursuant to Memorandum Circular No. 01-P dated 28 January 2002 re: Reclassification of all Provinces ..., which are solely and primarily based on income bracket, without the benefit of an official and approved petition of the [SP] requesting for an additional seat of their Sangguniang Members, as required under [R.A.] No. 8553

xxx xxx xxx"

Considering that time is of the essence and pending receipts of the reports/resolutions from various [SP] per recommendation of [Atty. Joson] which may derail the printing of the accountable forms for the May 10, 2004 elections, the Commission RESOLVED as it hereby RESOLVES, to wit:

- 1) to defer implementation of Resolution No. 6662 insofar as the provinces of Misamis Occidental, Agusan del Norte and Lanao del Sur are concerned;
- 2) to maintain the allocation of seats for [the three] provinces ... to wit:

DISTRICT APPORTIONMENT

PROVINCE FIRST DISTRICT SECOND DISTRICT Total

Misamis Occidental 4 4 8

Agusan del Norte 1 7 8

Lanao del Sur 4 4 8

Let the Deputy Executive Director for Operations implement this resolution.... (Words in bracket added.)

Then came the May 10, 2004 elections. After the canvassing of votes, the Provincial Board of Canvassers (PBOC) of Agusan del Norte proclaimed seven (7) candidates as the newly elected SP members of that province's Second District.[6] Landing in the 8[th] and 9[th] places for that district were respondents Andres R. Tan and Sunny M. Ago, respectively.

Subsequently, Director Joson recommended to the COMELEC a revisit of its Res. No. 04-0291.[7] The recommendation was particularly made in response to the request of one Shirali Sani to be proclaimed as the fifth elected SP member of the 1[st] District of Lanao del Sur, which, per COMELEC Res. No. 04-0291, was supposed to have only four (4) allotted seats.

On 3 August 2004, the COMELEC en banc issued herein assailed Res. No. 04-0856[8] directing, among other things, the proclamation of the 8[th] and 9[th] placed winning SP candidates for the Second District of Agusan del Norte. Resolution No. 04-0856 dispositively reads:

Finding the recommendation of [Director] Joson to be meritorious, the Commission RESOLVED, as it hereby RESOLVES to revisit Min. Resolution No. 04-0291 dated 16 March 2004 re deferment of Resolution No. 6662 promulgated on 06 March 2004 insofar as the [three] provinces [covered thereby] are concerned. Accordingly,

- to AFFIRM/APPROVE the increase of the allocation of seats for said provinces as provided under Resolution No. 6662, as follows:

DISTRICT APPORTIONMENT

PROVINCE 1st District 2nd District Total

Misamis Occidental 5 5 10

Agusan del Norte 1 9 10

Lanao del Sur 5 5 10

- xxx

- to proclaim the 5[th] place winning [SP] candidates ... of Lanao del Sur and the 8[th] and 9[th] place winning [SP] candidates for the Second District of Agusan del Norte.

- to direct the [PBOC] of Misamis Occidental, Agusan del Norte and Lanao del Sur to convene at the Central Office, Comelec, Manila and proclaim the 5[th] place winning [SP] candidates of the First and Second Districts of Misamis Occidental and Lanao del Sur and the 8[th] and 9[th] place winning candidates for the Second District of Agusan del Norte.

Let the Deputy Executive Director for Operations implement this resolution. (Emphasis and underscoring in the original; words in brackets added)

The respective Chairmen and members of the PBOC of the three (3) provinces affected were each furnished a copy of Res. No. 04- 0856.[9]

On August 21, 2004, the COMELEC Commissioner in charge of the ODED0 ordered the constitution of a new PBOC for the provinces involved. He also appointed, subject to the confirmation of the Commission en banc, the members who shall compose the PBOC for the purpose of proclaiming the additional winning SP position candidates.[10]

Subsequently, the PBOC of Agusan del Norte, as thus constituted, following the canvass of votes, proclaimed respondents Andres R. Tan and Sunny M. Ago as the 8[th] and the 9[th] placed winning SP candidates for the Second District of Agusan del Norte.

Hence, this recourse by the Province of Agusan del Norte, through its Provincial Governor.

In its en banc Resolution[11] of September 28, 2004, the Court directed the parties to observe the status quo prevailing before the filing of the instant petition.

Petitioner imputes grave abuse of discretion to the COMELEC en banc for issuing Res. No. 04-0856 which, to reiterate, ordered the proclamation of the 8[th] and 9[th]placed winning SP candidates for the Second District of Agusan del Norte. It claims, on the main, that the eventual proclamation of the two candidates was illegal, only seven (7) slots for the SP having been allocated by the Commission in the official ballots; and that only seven (7) winners were originally proclaimed by the regular Agusan del Norte PBOC.

Petitioner's contention does not recommend itself for concurrence.

Sections 1 and 2 of R.A. No. 8553, amending Sec. 41(b) of the Local Government Code of 1991 (R.A. No. 7160), respectively state:

SECTION 1. Section 41(b) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended to read as follows:

(b) The regular members of the [SP], sangguniang panlungsod, and sangguniang bayan shall be elected by district as follows:

First and second-class provinces shall have ten (10) regular members; xxx; Provided: That in provinces having more than five (5) legislative districts, each district shall have two (2) [SP] members, without prejudice to the provisions of Section 2 of Republic Act No. 6637. xxx. The presidents of the leagues of sanggunian members of component cities and municipalities shall serve as ex officio members of the [SP] concerned. The presidents of the liga ng mga Barangay and the pederasyon ng mga sangguniang kabataan elected by their respective chapters, as provided in this Code, shall serve as ex officio members of the [SP], sangguniang panlungsod, and sangguniang bayan.

SEC. 2. Upon the petition of the provincial board, the election for any additional regular member to the [SP] as provided for under this Act, shall be held not earlier than six (6) months after the May 11, 1998 national and local elections. (Emphasis and words in brackets supplied.)

Pursuant to the afore-quoted provisions, the COMELEC en banc issued Res. No. 6662 which increased the allocated slots for Agusan del Norte SP from eight (8) to ten (10) seats (1 slot for the 1st District and 9 slots for the 2nd District). The province's recent acquisition of second class status accounted for the increase of allocated seats. Resolution No. 6662 provides:

The Commission ... by virtue of the powers vested in it by the Constitution, the Omnibus Election Code and other election laws hereby allocates, in connection with the May 10, 2004 ... elections, the number of seats of elective: (1) Members of House of Representatives; 2) Members of [SP]; (3) Sangguniang Panlungsod; and (4) Sangguniang Bayan, as shown in Annex "A" "B" "C" and "D" hereof, respectively, which annexes shall form an integral part of this resolution.

Let the Education and Information Department publish this Resolution in two (2) newspapers of general circulation in the Philippines and to furnish copies thereof to all Regional Election Directors, Provincial Supervisors and Election Officers.

Inasmuch as the individual respondents ranked 8th and 9th, respectively, in the election of the SP in the Second District of Agusan del Norte, their proclamation as 8th and 9th placed winning SP candidates was proper.

It may be that the COMELEC published, in the 18 April 2004 issue of the Daily Inquirer, COMELEC Res. No. 04-0291 deferring the implementation of its earlier Res. No. 6662. It ought to be stressed, however, that Res. No. 04-0291 was, as aptly pointed out by the Office of the Solicitor General, issued on the erroneous ground that the provinces thus specified therein had yet to file their petitions with the COMELEC for the implementation of Res. No. 6662 increasing their slots for SP.^[12] The COMELEC's reluctance to implement Res. No. 6662 was brought about by the observation and apprehension of COMELEC Deputy Executive Director for Operations Pio Joson that the affected provinces may not be prepared to carry out the effects of the resolution. The observation and apprehension of Director Joson went as follows:

Accordingly, granting that the Commission is correct, for the additional two (2) SP members, there might some other legal complications that may crop up for the said action, such as:

- What if the said provinces do not or refuse to acknowledge it, taking into account that they don't have an appropriate allocated fund for the said new office? And the fact that even presently many LGU do not have the fiscal capability to meet the basic salaries and allowances of their Sangguniang and other administrative offices/employees. Or they were never informed by the Commission for such increase considering that they are the party concerned and would be affected. What would be the remedy of the Commission?
- How about those provinces which are not even notified about the increase, and now the Commission declares that there is an additional 2 SP member to be voted for this coming election? Can there be an extension to set

for filing of certificate of candidacy for the said two additional positions? (underscoring supplied)

To be sure, the apprehension of Director Joson regarding Agusan del Norte was misplaced. There can be no dispute that, after its receipt of a copy of COMELEC Res. No. 6662, the SP of Agusan del Norte had filed its petition in the form of a resolution, i.e., Res. 074-04,[13] accepting and availing of the additional seats provided by Res. No. 6662 and even proposing a deadline for the filing of the certificates of candidacy for the additional SP seats. SP Resolution No. 074-04 disposes as follows:

NOW THEREFORE —

BE IT RESOLVED, by the [SP] of Agusan del Norte, ... to adopt and concur with Resolution No. 6662 of the [COMELEC] as promulgated on March 8, 2004, mandating the allocation of two (2) additional seats (from eight to ten members) of the [SP] of the province of Agusan del Norte and the entirety of the said law;

RESOLVED FURTHER: To officially inform the [COMELEC] that in adopting and concurring with the COMELEC Resolution 6662, the province of Agusan del Norte is complying with its mandate and is implementing the same starting this May 10, 2004 National and Local Elections;

RESOLVED FURTHERMORE: That the deadline for the filing of Certificates of Candidacy for the additional two (2) seats of the [SP] shall be fixed by COMELEC in the midnight of April 12, 2004.

RESOLVED FINALLY: To furnish copies of this resolution to the Commission on Elections, Manila ...; to the COMELEC Regional Office, Caraga Region i½ and to COMELEC Provincial Office thru Atty. Roland Edayan for their immediate appropriate action. (underscoring supplied)

Following the COMELEC's acceptance of the SP proposal on the matter of filing of certificates of candidacy, several candidates in fact filed their respective certificates of candidacy for the additional two (2) SP positions. With the view the Court takes of this case, necessary changes were then made in the election forms, supplies and materials towards accommodating the election of two (2) additional members of the Agusan del Norte Provincial Board.

Appropriately, the Constitution[14] invests the COMELEC with broad power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite and other electoral exercises. In the discharge of its legal duties, the COMELEC is provided by the law with tools, ample wherewithal, and considerable latitude in adopting means that will ensure the accomplishment of the great objectives for which it was created - to promote free, orderly and honest elections.[15] Conceived by the charter as the effective instrument to preserve the sanctity of popular suffrage, endowed with independence and all the needed concomitant powers, COMELEC deserves to be accorded by the Court the greatest measure of presumption of regularity in its course of action and choice of means in performing its duties, to the end that it may achieve its designed place in the democratic fabric of our government.[16]

As the requirements of R.A. No. 8553 and Res. No. 6662 appear to have been complied with insofar as Agusan del Norte was concerned, the Comelec en banc was, under the premises, correct in having the 8[th] and 9[th] winning SP candidates for said province's Second District proclaimed. To be sure, there is no clear showing that the COMELEC's order to proclaim was made in grave abuse of discretion, a phrase which denotes a capricious, despotic or whimsical exercise of judgment as is equivalent to lack of jurisdiction.[17] This is not to say, however, that the COMELEC was not remiss in publishing the notice of deferment of the implementation of its Res. No. 6662 for all the provinces mentioned therein. Ideally, COMELEC should have had excluded Agusan del Norte from the deferment advice after the latter had expressed its intention to accept and avail of the allocation of the two additional SP positions. But, as we stated in *Tupay Loong v. COMELEC*: [18]

Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in a swivel chair criticism of these actions often taken under very difficult circumstances.

Moreover, the COMELEC was justified, under the circumstances then prevailing, in constituting a new PBOC for Agusan del Norte to act vice the regular PBOC for the purpose of canvassing and proclaiming the 8th and 9th placed winning SP candidates of Agusan del Norte. For, as reported to the COMELEC, "the composition of the previous PBOC of 10 May 2004 National and Local Elections in Agusan del Norte xxx cannot convene for the reason that xxx Atty. Roland Edayan, Chairman [of the PBOC of Agusan del Norte] is not available. Besides, there is a need to create new PBOC, considering that the previous board no longer exists." [19]

Consistent with its broad powers to enforce and administer all election laws, the Comelec has power of supervision and control over the boards of election inspectors and canvassers. [20] This power includes the authority to relieve any member thereof for cause [21] or, as in this case, to appoint a substitute. [22]

A final consideration. Petitioner's lament about the COMELEC having virtually appointed respondents Andres R. Tan and Sunny M. Ago as members of the Agusan del Norte SP is undeserving of consideration. As it were, even the petitioner concedes that both respondents received the eight and the ninth highest number of votes for the position of SP member for the province's 2nd District. In net effect, respondents Tan and Ago were, in the May 10, 2004 elections, elected as regular members of the 10-man SP of Agusan del Norte. Election and appointment, as modes of acquiring title to a public office, are distinct political law concepts. The Court need not belabor the difference.

WHEREFORE, the instant petition is DISMISSED. Accordingly, the status quo ante order issued by the Court on September 28, 2004, is hereby RECALLED.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Annex "A" of Petition; Rollo, pp. 20 et seq.

[2] Annex "C" of Petition; Rollo, p. 26.

[3] Annex "D" of Petition; Rollo, pp. 27-29.

[4] Annex "F" of Petition; Rollo, pp. 36-38.

[5] Annex "G" of Petition; Rollo, pp. 39 et seq.

[6] Annex "H" of Petition; Rollo, p. 41.

[7] Supra note 5.

[8] Supra note 1.

[9] Rollo, pp. 42 et seq.

[10] Per Memorandum dated August 21, 2004; Rollo, pp. 42-43.

[11] Rollo, p. 50.

[12] Memorandum for the Comelec; Rollo, pp. 191-192.

[13] Supra note 3.

[14] Sec. 2(1), Art. IX (c).

[15] Cauton v. COMELEC, G.R. No. L-25467, April 27, 1967, 19 SCRA 911; Pangandaman v. COMELEC, G.R. No. 134340, November 25, 1999, 319 SCRA 283.

[16] Aratuc v. COMELEC, G.R. Nos. L-49705-09, February 8, 1979, 88 SCRA 251.

[17] Litton Mills, Inc. v. Galleon Trader, Inc., G.R. No. L-40867, July 26, 1988, 163 SCRA 489, citing cases.

[18] G.R. No. 133676, April 14, 1999, 305 SCRA 832.

[19] Supra note 10.

[20] Sec. 227 of the Omnibus Election Code.

[21] Agpalo, Comments on the Omnibus Election Code, 1998 Revised Edition, p. 294; Ticson v. COMELEC, G.R. No. L-52451, March 31, 1981, 103 SCRA 671.

[22] Javier v. COMELEC, G.R. No. L-22248, January 30, 1965, 13 SCRA 156.

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